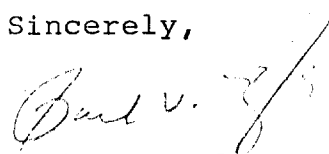


I am hopeful we can work out the details
of my request expeditiously to our mutual benefit.

I can be reached at (609) 561-7083. Thank you
for your attention in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul V. Engle", with a large, sweeping flourish extending upwards and to the right.

Paul V. Engle
President, General Manager

c.c. FCC Policy & Rulemaking
Mr. Barrett Brick

hearing was a positive step for Schumer.

A week before the hearing the congressman had expressed frustration with Time Warner and Showtime's parent company, Time Warner Entertainment Company, for not inviting him to the hearing. He believed the networks were not working to meet the standards of the hearing.

But the hearing was a presentation of practical original programming, and the hearing was a positive step for Schumer.

EX PARTE PRESENTATION

Paul V. Engle
Docket # 92-266

EXHIBIT #9

"I believe representatives from our Washington offices attempted to bring in other elements of the industry in other meetings. Those were unsuccessful...time kept passing. We did not want to look like we were dragging our feet. And we finally got together the only three people who would come together and meet on this and it was us," said Beth Waxman Bressan, vice president, programming and practices.

A day after the hearing it was left to Martin Franks, CBS vice president, Washington, to set the record straight. "We did not seek the involvement or approval of other television industry participants before we adopted the principles," he said. A three-network-sponsored industrywide conference on television violence planned for this spring is intended, Franks said, to be "our mechanism for including others in the television industry in this discussion."

Right up to the point the networks announced their new joint standards, Fox did not have a clue about them, said Preston Padden, a Fox senior vice president. Padden said he believed the network witnesses last week "simply made an honest mistake" and thanked Franks for clarifying the matter, but said that he was frustrated by widespread reports of Fox's uncooperative stance following the hearing. ■

BOTH SIDES FIND SOLACE IN MUST-CARRY DECISION

By Joe Flint

Both the broadcast and the cable industries found good news in a Los Angeles federal court's decision ordering Jones Intercable to pay Sunbelt Television \$3 million in damages for not carrying Sunbelt's KHIZ (TV) Barstow, Calif. (BROADCASTING, Dec. 14).

A jury found that, by not carrying the station, Jones Intercable was acting in an anti-competitive manner and trying to monopolize local advertising markets. Jones countered that the station's programming was redundant.

For cable attorneys, the decision signals there is no need for constitutionally required must carry because there are other solutions to remedy arguments over carriage.

Broadcasters say the decision demonstrates the need for must carry to prevent anti-competitive behavior by cable systems, and believe it will buttress their case in the current constitutional challenges to must carry before the U.S. District Court in Washington (see page 38).

The defendants in those challenges happily greeted the jury's decision in the Jones-Sunbelt case. "It's extremely helpful," said National Association of Broadcasters counsel Jack Goodman. Sunbelt's rationale—that government-mandated carriage of its station on Jones's Sierra Madre system is constitutional—is "identical" to the rationale NAB and other defendants intend to employ, he said.

"I think [Sunbelt-Jones] will be raised by both sides in this case," said Bruce Soklar, partner, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, Washington, which is representing Turner Broadcasting System, one of five plaintiffs in the must-carry challenge. "But it won't drive the outcome of the case."

Soklar admitted that the decision provides a weapon to must-carry supporters, but it also allows must-carry challengers to demonstrate that other remedies—such as the Sunbelt-Jones antitrust approach—may be used to settle carriage disputes rather than federal law. But Soklar said it is impossi-

ble to predict the impact of Sunbelt-Jones before appeals in that case are heard.

"Certainly the case has implications to the bigger picture," said Wesley Heppler, partner, Cole Raywid & Braverman, that "directly impact cable operators' right to choose programming." It would also, he said, "eliminate any need for must-carry requirements."

There is also concern that Sunbelt's landmark victory could open the door to other suits against operators, said Mintz, Levin partner Frank Lloyd.

Cable and broadcast attorneys could recall no other case in which a broadcaster won such a challenge, and while many broadcasters have considered such suits, the costs and the time involved have kept them away, the NAB said.

The Sunbelt-Jones jury found that TV, radio, newspapers, billboards and other local media are not reasonable substitutes for one another in terms of advertising. The basic test, the court said, is whether "significant changes in the price of one of them will cause a considerable number of advertisers to switch from one medium to another. If so, the media may be in the same market."

The jury found that not to be the case, and said that Jones's refusal to allow Sunbelt on the system "injured Sunbelt in its business or property by causing it to lose sales on which it would have made a profit."

"It's plain that broadcasters and local cable compete for local advertising. Cable serves as a gatekeeper, and the decision not to carry will have a significant impact on local advertising markets. It prevents competitors from reaching audiences and is a restraint of trade," said David Donovan, vice president, legal and legislative affairs, Association of Independent Television Stations.

Jones Intercable has said it will appeal the decision to the Ninth Circuit Court in Los Angeles, but Jones Chairman and Chief Executive Officer Glenn Jones declined to comment on the case, and the attorneys who argued Jones's case did not return calls. ■